

BANKING AND INSURANCE

DIVISION OF BANKING

Advertising

Proposed Readoption with Amendments: N.J.A.C. 3:2

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-15(e) and 17:16H-1 et seq.

Calendar Reference: See Summary below for explanation of exceptions to calendar requirement.

Proposal Number: PRN 2011-046.

Submit comments by April 23, 2011 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 3:2, which is scheduled to expire on July 19, 2011, pursuant to N.J.S.A. 52:14B-5.1c. N.J.A.C. 3:2 requires any depository institution, lender or other person or entity subject to supervision, licensing or regulation by the Department that advertises interest rates to comply with applicable

disclosure requirements. The chapter also prohibits any advertising that is misleading, deceptive, inaccurate, false or that negatively affects public confidence in a financial institution or financial institutions in general in accordance with N.J.S.A. 17:16H-1 et seq. The rules proposed for readoption also provide examples of advertising that shall be deemed deceptive or misleading. Finally, the rules proposed for readoption provide procedures for notice and hearing regarding possible violations of N.J.S.A. 17:16H-1 et seq. and provide for penalties for violations. The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Department is considering additions to N.J.A.C. 3:2-1.4(b) regarding per se violations of the prohibition against deceptive advertising, which will be the subject of a separate notice of proposal.

The Department proposes to amend N.J.A.C. 3:2 in response to the enactment of the New Jersey Residential Mortgage Lending Act in P.L. 2009, c. 53 (RMLA), which is codified at N.J.S.A. 17:11C-51 to 89. New terminology utilized in the RMLA for residential mortgage licensees replaces the terms found in the former Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq. The out of date terms appear in existing N.J.A.C. 3:2. The Department proposes to amend the definition of “financial institution” in N.J.A.C. 3:2-1.2, and N.J.A.C. 3:2-1.4(b)5 and 6, to update the terms used in these rules. In addition, the definition of “mortgage loan” in N.J.A.C. 3:2-1.2 is proposed to be amended to refer to a lien on a real property with a structure containing or to contain “up to four dwelling units.” This change to the current reference to “one to six dwelling units” is also proposed to conform the rule to the current statutory text in the RMLA.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for readoption with amendments apply to all financial institutions subject to supervision, regulation or licensing by the Department. They will continue to implement N.J.S.A. 17:16H-1 et seq. by requiring financial institutions to inform consumers of financial products the institutions offer in a full and accurate manner. Moreover, the rules proposed for readoption with amendments will continue to require that the institutions have a reasonable number of advertised products available for qualified applicants, and will continue to provide standards for financial institutions to comply with N.J.S.A. 17:16H-1 et seq. Additionally, the rules proposed for readoption with amendments will require loan advertisements by New Jersey supervised, regulated or licensed financial institutions to comply with the provisions of the New Jersey Home Ownership Act (HOSA), N.J.S.A. 46:10B-22 et seq., even if the entity to whom such a financial institution may broker such a loan is not subject to HOSA by operation of Federal preemption. Through the promulgation of these requirements, the rules proposed for readoption with amendments will have a beneficial social impact on consumers and financial institutions.

Economic Impact

The rules proposed for readoption with amendments will not have a significant negative economic impact upon New Jersey financial institutions. The requirement that advertising by a

financial institution not be inaccurate or misleading is mandated by N.J.S.A. 17:16H-1 et seq., and is a reasonable and anticipated commercial requirement. Moreover, the full truthful disclosure of information on loan and savings products required by the rules proposed for readoption with amendments will continue to provide a substantial measure of protection for the consumer, thereby averting potential negative economic consequences to the consumer. Those licensees that advertise residential mortgage loans or mortgage loan services may incur a nominal additional cost to include in their advertisements the language required by the proposed readoption with amendments.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments do not exceed any Federal requirements or standards. The rules proposed for readoption with amendments continue to apply certain Federal rules and regulations to New Jersey financial institutions. The Federal rules and regulations involved are 12 U.S.C. §§ 4301 et seq., 12 CFR 230, 15 U.S.C. §§ 1601 et seq. and 12 CFR 226 et seq.

Jobs Impact

The Department does not anticipate any jobs will be generated or lost as a result of the rules proposed for readoption with amendments. Financial institutions will use existing staff for continued compliance with the existing rules. The proposed amendments similarly will not require additional staff.

The Department invites comments with supporting data or studies concerning the jobs impact of the rules proposed for re adoption with amendments together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the rules proposed for re adoption with amendments.

Regulatory Flexibility Analysis

Some New Jersey financial institutions are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for re adoption with amendments will continue to impose compliance requirements on these entities, requiring financial institutions to fairly disclosure interest rates and to advertise loan and savings products in an accurate manner. The cost of compliance is discussed in the Economic Impact above. Financial institutions should not have to employ professional services to comply.

The requirements imposed by the rules are generally mandated pursuant to N.J.S.A. 17:16H-1 et seq. and are not unduly burdensome. The purpose of N.J.S.A. 17:16H-1 et seq. is to ensure that all consumers receive disclosures designed to ensure that the advertising of loan products is truthful and not deceptive or misleading. The purpose of these requirements does not vary based upon business size. Accordingly, no differentiation based on business size is provided.

Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption with amendments will have an insignificant impact on affordable housing in New Jersey because the rules proposed for readoption with amendments concern the regulation of advertising by financial institutions.

Smart Growth Development Impact

The rules proposed for readoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules proposed for readoption with amendments would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments concern the regulation of advertising by financial institutions.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:2.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. ADVERTISING BY FINANCIAL INSTITUTIONS

3:2-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

...

“Financial institution” means any bank, savings bank, state association, credit union, [licensed lender, including a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender] **residential mortgage lender, correspondent mortgage lender, residential mortgage broker, residential mortgage loan originator**, consumer lender, or sales finance company, or any other institution, corporation, partnership, or individual subject to supervision, regulation or licensing by the Department.

...

“Mortgage loan” means a loan made by a financial institution to a natural person for a personal, family or household purpose, secured by a mortgage constituting a lien upon real property on which there is erected or to be erected a structure containing one to [six] **four** dwelling units, a portion of which may be used for nonresidential purposes, or upon a lease of the fee of such real property, in the making of which the financial institution relies primarily upon the value of the mortgaged property.

...

3:2-1.4 Violations of the Act

- (a) (No change.)
- (b) Without limiting (a) above, the following conduct shall be deemed deceptive or misleading:

1. – 4. (No change.)

5. The advertisement of a mortgage loan by a **residential** mortgage broker (or **residential** mortgage [banker] **lender** that acts merely as a mortgage broker with regard to the advertised loan) or by a mortgage loan originator employed by such licensee that does not specifically and conspicuously state that the advertiser will not make any mortgage loan commitments or fund any mortgage loans under the advertised program and does not contain a statement that conspicuously states that the [mortgage broker (or mortgage banker acting as set forth above)] **advertising licensee, or his or her employer if the advertiser is a licensed mortgage loan originator**, arranges loans with third-party providers;

6. The advertisement of a mortgage loan or mortgage loan services by a [licensed lender with] **residential** mortgage [banker] **lender**, correspondent mortgage [banker] **lender**, [or] **residential** mortgage broker [authority] or **residential mortgage loan originator** without including in the advertisement or broadcast announcement, the name, address and telephone number of the licensee and the words “licensed by the N.J. Department of Banking and Insurance”;

7. – 8. (No change.)

(c) – (d) (No change.)